Simon Russell
Enforcement Chief
CITY OF OAKLAND PUBLIC ETHICS COMMISSION
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Petitioner

BEFORE THE CITY OF OAKLAND
PUBLIC ETHICS COMMISSION

In the Matter of
SUSAN MONTAUK,
Respondent.

Case No.: 19-01.2
STIPULATION, DECISION AND ORDER

STIPULATION

Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and respondent SUSAN MONTAUK, agree as follows:
1. This Stipulation will be submitted for consideration by the City of Oakland Public Ethics Commission (Commission) at its next regularly scheduled meeting.

2. This Stipulation resolves all factual and legal issues raised in this matter and represents the final resolution to this matter without the necessity of holding an administrative hearing to determine the liability of, or penalties and/or other remedies to be imposed upon, Respondent.

3. Respondent knowingly and voluntarily waives all procedural rights under the Oakland City Charter, Oakland Municipal Code, the Public Ethics Commission Complaint Procedures, and all other sources of procedural rights applicable to this PEC enforcement action. These procedural rights include, but are not limited to, the right to personally appear at an administrative hearing held in this matter, to be represented by an attorney at their own expense, to confront all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed.

4. Respondent represents that they have accurately furnished to the Commission all discoverable information and documents that are relevant to the Commission’s determination of a fair and comprehensive resolution to this matter.

5. Upon approval of this Stipulation and full performance of the terms outlined in this Stipulation, the Commission will take no future action against Respondent regarding the violations of law described in Exhibit #1 to this Stipulation, and this Stipulation shall constitute the complete resolution of all claims by the Commission against Respondent related to such violations.

6. If Respondent fails to comply with the terms of this Stipulation, then the Commission may reopen this matter and prosecute Respondent to the full extent permitted by law, except that the Statute of Limitations shall be waived for any violations that were not discoverable by the Commission due to non-compliance with the terms of this Stipulation.

7. This Stipulation is not binding on any other law enforcement or regulatory agency, and does not preclude the Commission or its staff from referring the matter to, cooperating
with, or assisting any other government agency with regard to this matter, or any other matter related to it.

8. Respondent admits that they violated the provision(s) of the Oakland Municipal Code specified in Exhibit #1 to this Stipulation, and in the manner set forth in that Exhibit, which is expressly incorporated by reference in its entirety to this Stipulation and represents a true and accurate summary of the facts in this matter.

9. Respondent will fully cooperate with any related enforcement actions that may be brought against other Respondents in this or other related matters, including but not limited to the provision of truthful testimony at an administrative hearing or similar proceeding, should the need ever arise.

10. The Commission will impose upon Respondent the penalties and/or other remedies specified in Exhibit #1.

11. A cashier’s check from Respondent, in the amount specified in Exhibit #1 to this Stipulation, made payable to the “City of Oakland,” is submitted with this Stipulation as full payment of the administrative penalty specified in Exhibit #1, to be held by the Commission until the Commission issues its decision and order regarding this matter.

12. In the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen business days after the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with this Stipulation will be reimbursed to them.

13. In the event the Commission rejects this Stipulation and a full evidentiary hearing becomes necessary, this Stipulation and all references to it are inadmissible as evidence, and neither any member of the Commission, nor the Executive Director or any member of PEC staff, shall be disqualified from that hearing because of prior consideration of this Stipulation.

14. This Stipulation may not be amended orally. Any amendment or modification to this Stipulation must be in writing duly executed by all parties and approved by the Commission at a regular or special meeting.
15. This Stipulation shall be construed under, and interpreted in accordance with, the laws of the State of California and the City of Oakland. If any provision of the Stipulation is found to be unenforceable, the remaining provisions shall remain valid and enforceable.

16. The parties hereto may sign different copies of this Stipulation, which will be deemed to have the same effect as though all parties had signed the same document. Verified electronic signatures shall have the same effect as wet signatures.

So agreed:

Feb 28, 2024
Simon Russell, Chief of Enforcement
City of Oakland Public Ethics Commission, Petitioner

Feb 28, 2024
Susan Montauk, Respondent
DECISION AND ORDER

The foregoing Stipulation of the parties to “In the Matter of Susan Montauk,” PEC Case No. 19-01.2, including all attached Exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

So ordered:

______________________________________________
Ryan Micik, Chair
City of Oakland Public Ethics Commission

Dated
EXHIBIT #1
In the Matter of Susan Montauk
PEC #19-01.2 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

CONTENTS

INTRODUCTION ..............................................................................................................................2

FACTUAL SUMMARY ..................................................................................................................... 3

“Candidate A” Convinces The Oakland Fund To Act as Their Campaign Vehicle.................... 3

Campaign Forms Filed by The Oakland Fund ............................................................................ 5

Montauk’s Cooperation with the PEC ....................................................................................... 9

SUMMARY OF LAW & LEGAL ANALYSIS ...................................................................................... 9

The Oakland Fund Was A Candidate-Controlled Committee .................................................10

The Oakland Fund Failed to Publicly Identify Candidate A as Its Controlling Candidate......13

Liability........................................................................................................................................ 16

VIOLATIONS: SUSAN MONTAUK ................................................................................................. 18

Count 1: Failure to Disclose Controlling Candidate Relationship on Campaign Forms......18

PENALTIES ..................................................................................................................................... 21

Failure to File and/or Disclose Controlling Candidate Relationship on Campaign Forms
(Count 1) .................................................................................................................................... 24

RECOMMENDATION .................................................................................................................... 24

Item 9 - Proposed Settlement
INTRODUCTION

This case concerns a ballot measure campaign committee active in the November 2018 election in Oakland that, unknown to the public, was controlled by an elected official whom we shall refer to as “Candidate A” in this document.1 The committee was called “The Oakland Fund” and it supported a ballot measure meant to impose a parcel tax for purposes of funding education-related programs. Candidate A was closely involved with that ballot measure campaign and wished to use The Oakland Fund (which had existed for a number of years without Candidate A’s involvement) as a public-facing mechanism for depositing and disbursing campaign funds for it.

Because The Oakland Fund never registered as a “candidate-controlled” ballot measure committee or incorporated Candidate A’s name into its own (which ballot measure committees controlled by an elected official are required to do), it was able to avoid informing the public that it was controlled by Candidate A during the 2018 election.

Respondent Susan Montauk was a board member of The Oakland Fund during this time. She had personal knowledge of Candidate A’s involvement with the ballot measure campaign and voted for The Oakland Fund to become the vehicle for depositing and disbursing funds related to that campaign. However, she was unaware of the legal implications of such an arrangement and had limited involvement with the rest of the campaign operations.

PEC staff and Respondent have agreed to settle this matter without an administrative hearing. Respondent has further agreed to cooperate with the PEC in any other enforcement actions that may be brought against other persons involved in this matter, including by providing truthful testimony concerning the facts laid out in this document, should the need ever arise. PEC staff and Respondent are now presenting their stipulated agreement, summary of the facts, and legal analysis to the City of Oakland Public Ethics Commission for

1 PEC staff is withholding Candidate A’s identity at this time due to other pending enforcement matters.
its approval. Together, PEC staff and Respondent recommend approval of their agreement and imposition of administrative penalties totaling $500, as described in more detail below.

**FACTUAL SUMMARY**

"Candidate A" Convinces The Oakland Fund To Act as a Campaign Vehicle

The Oakland Fund was a ballot measure committee that had been created long before Candidate A ever got involved with it. It was originally formed by a group of Oakland residents in 2008 to support various ballot measures meant to increase local tax revenue and balance the City’s budget. Over the following years it had supported other initiatives as well. As the 2018 campaign season approached, the Oakland Fund was being managed by a three-person board and did not have any plans to engage in that year’s election.

Meanwhile, an elected official whom we shall refer to as “Candidate A” had been closely involved in the preparations for an initiative that had recently qualified for the ballot, called “Measure AA.” Some funds for that campaign had already been raised and a campaign plan worked out, but the Measure AA backers still lacked an official ballot measure committee through which funds would be deposited and disbursed, and which would serve as the public face for the campaign.

At that point, Candidate A personally called two of the Oakland Fund board members (Eugene Zahas and Susan Montauk) and asked if the Oakland Fund could be used for those purposes. Over lengthy discussion, an understanding was reached between Candidate A and the Oakland Fund that the latter would receive contributions and pay the campaign’s bills, but would not be involved in day to day operations. They also understood that the preferred accounting firm of the Measure AA team would handle all of the necessary behind-the-scenes paperwork, and that the Oakland Fund would receive a large initial donation to cover the salary of Candidate A’s representative on the campaign team, as well as other campaign
expenses. And because The Oakland Fund already had a balance of about $10,000 of its “own” money before Candidate A contacted them, which would soon be mixed with incoming Measure AA funds, the Oakland Fund was promised that they could keep $10,000 at the end of the campaign in order to avoid potentially losing money.

In an internal email to other board volunteers (including Montauk), Oakland Fund treasurer Zahas summarized his initial conversation with Candidate A in the following way: “[Candidate A] wants the Oakland Fund to handle the [Measure AA] campaign. Actually, we will just be acting as fiscal agent, as there is (or will be) a campaign committee.” Two other people we shall refer to as Person B and Person C also conducted follow-up conversations with the Oakland Fund board volunteers about these arrangements; Zahas told the rest of the board (including Montauk) that Person B and Person C were “carrying the ball for [Candidate A].”

Despite some initial reluctance, the three board members of the Oakland Fund then met and agreed to let their committee be used as Candidate A had requested. They also changed the committee’s name to “The Oakland Fund For Measure AA.” This new name did not mention Candidate A’s involvement, nor did any of the campaign forms that The Oakland Fund filed throughout the campaign. At no point was Montauk advised that there might be additional legal requirements arising from Candidate A’s involvement with the Oakland Fund, nor did Montauk possess the training or experience to flag this as a potential issue.

Throughout the campaign, The Oakland Fund received over $1.8 million dollars in contributions on behalf of Measure AA – far in excess of any amount of money it had ever

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3 This is somewhat confusing terminology, in that the legal term “campaign committee” normally refers to the entity that collects and disburses campaign funds (like The Oakland Fund). Here, Zahas was informally using the term “campaign committee” to refer to a separate group of people who would apparently be in charge of actually running the day-to-day operations of the campaign.
received in previous elections – and wrote expenditure checks covering the same amount (not including the $10,000 it was allowed to keep for acting as the campaign vehicle). Ultimately, Measure AA passed with 62% of the vote.

Campaign Forms Filed by The Oakland Fund

Throughout the campaign, The Oakland Fund filed numerous campaign forms with the PEC that failed to disclose that “Candidate A” was its controlling candidate.

Form 410

The first type of form that The Oakland Fund filed with the PEC is called a Form 410 (“Statement of Organization”). These are forms that a committee must file when its first registers as a campaign, and whenever it changes its name, purpose, or main personnel. It must also disclose on these forms whether it is a controlled committee of a candidate or officeholder. The forms must be signed by the controlling candidate, under penalty of perjury. Finally, it is the form on which a committee declares what its name will be. As explained in more detail later in this Exhibit, candidate-controlled committees are required to put the last name of their controlling candidate in the committee’s name (e.g. “Committee X, a Controlled Committee of Oakland Councilmember Smith”). The purpose of the form is to inform the public of who is running a particular campaign committee and whether it is controlled by any elected officials or candidates.

The table below shows all of the dates that The Oakland Fund filed a Form 410 in 2018 (i.e., the time period when Candidate A was involved with the committee). It did not disclose that it was a controlled committee, did not identify Candidate A as its controlling candidate, and failed to include Candidate A’s last name in its committee name on any of these forms. Candidate A did not sign any of the forms.
Form 410s Filed by The Oakland Fund, March – August 2018

<table>
<thead>
<tr>
<th>Date Filed</th>
<th>Committee Name Given on Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 23, 2018</td>
<td>“The Oakland Fund”</td>
</tr>
<tr>
<td>August 22, 2018</td>
<td>“The Oakland Fund For Measure AA”</td>
</tr>
</tbody>
</table>

Form 460

The Oakland Fund also filed multiple forms known as a Form 460 (“Recipient Committee Campaign Statement”). These are periodic reports that a committee must file in order to report all of the money that it has raised and spent throughout the campaign. It must use its full committee name on the form, and report whether it is a controlled committee of a candidate or officeholder. The forms must be signed by the controlling candidate, under penalty of perjury. The purpose of the form is to inform the public where committees are getting their money from, and what they are spending it on. The purpose of declaring whether the committee is controlled by an elected official is so that the public can be informed of which donors might be indirectly benefiting from their donations to that official’s committee, as well as allowing the public to check whether any of those donors are City contractors.

The table below shows all of the dates that The Oakland Fund filed a Form 460 with the PEC, reporting the money it had raised and spent from January through December 2018 (i.e. the time period when Candidate A was involved with the committee). On each of these forms, it gave its name as either “The Oakland Fund” or “The Oakland Fund for Measure AA.” It failed to include Candidate A’s last name in its committee name, did not disclose that it was a controlled committee, and did not identify Candidate A as its controlling candidate on any of these forms. Candidate A did not sign any of the forms as its controlling candidate:
**Form 460s Filed by The Oakland Fund Covering January 1 – December 31, 2018**

<table>
<thead>
<tr>
<th>Date Filed</th>
<th>Dates Covered</th>
<th>Committee Name Given on Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 25, 2018</td>
<td>January 1 – March 31, 2018</td>
<td>“The Oakland Fund”</td>
</tr>
<tr>
<td>July 24, 2018</td>
<td>April 1 – June 30, 2018</td>
<td>“The Oakland Fund”</td>
</tr>
<tr>
<td>August 10, 2018</td>
<td>April 1 – June 30, 2018</td>
<td>“The Oakland Fund”</td>
</tr>
<tr>
<td>September 27, 2018</td>
<td>July 1 – September 22, 2018</td>
<td>“The Oakland Fund for Measure AA”</td>
</tr>
<tr>
<td>October 23, 2018</td>
<td>September 23 – October 20, 2018</td>
<td>“The Oakland Fund for Measure AA”</td>
</tr>
<tr>
<td>January 14, 2019</td>
<td>October 21 – December 31, 2018</td>
<td>“The Oakland Fund for Measure AA”</td>
</tr>
<tr>
<td>June 11, 2019</td>
<td>October 21 – December 31, 2018</td>
<td>(amendment) “The Oakland Fund”</td>
</tr>
</tbody>
</table>

**Form 497**

The Oakland Fund also filed what are known as Form 497s (“Contribution Reports”, sometimes informally referred to as “24-hour contribution reports”). These forms must be submitted within 24 hours, whenever a primarily-formed committee (such as The Oakland Fund) receives $1,000 or more from a single donor in the 90 days before the election concerning the measure that the committee is supporting. The purpose of the form is to inform the public -- before the election -- of which donors are making large contributions benefitting certain committees, particularly if they are controlled by a candidate or officeholder.
The table below shows all of the dates that The Oakland Fund filed a Form 497 with the PEC, reporting the contributions over $1,000 it had raised from August 2018 until the election that same year (when Candidate A was its controlling candidate). On each of these forms, it gave its name as either “The Oakland Fund” or “The Oakland Fund For Measure AA.” It failed to include Candidate A’s last name in its committee name:

<table>
<thead>
<tr>
<th>Date Filed</th>
<th>Committee Name Given on Form</th>
<th>Activity Reported</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 14, 2018</td>
<td>“The Oakland Fund”</td>
<td>$77,500 in contributions received</td>
</tr>
<tr>
<td>August 29, 2018</td>
<td>“The Oakland Fund For Measure AA”</td>
<td>$12,000 in contributions received</td>
</tr>
<tr>
<td>September 20, 2018</td>
<td>“The Oakland Fund For Measure AA”</td>
<td>$25,000 in contributions received</td>
</tr>
<tr>
<td>September 21, 2018</td>
<td>“The Oakland Fund For Measure AA”</td>
<td>$1,000 in contributions received</td>
</tr>
<tr>
<td>September 25, 2018</td>
<td>“The Oakland Fund For Measure AA”</td>
<td>$75,000 in contributions received</td>
</tr>
<tr>
<td>October 2, 2018</td>
<td>“The Oakland Fund For Measure AA”</td>
<td>$20,625 in contributions received</td>
</tr>
<tr>
<td>October 12, 2018</td>
<td>“The Oakland Fund For Measure AA”</td>
<td>$63,000 in contributions received</td>
</tr>
<tr>
<td>October 15, 2018</td>
<td>“The Oakland Fund For Measure AA”</td>
<td>$40,000 in contributions received</td>
</tr>
<tr>
<td>October 19, 2018</td>
<td>“The Oakland Fund For Measure AA”</td>
<td>$102,500 in contributions received</td>
</tr>
<tr>
<td>October 23, 2018</td>
<td>“The Oakland Fund For Measure AA”</td>
<td>$10,000 in contributions received</td>
</tr>
<tr>
<td>October 24, 2018</td>
<td>“The Oakland Fund For Measure AA”</td>
<td>$44,800 in contributions received</td>
</tr>
<tr>
<td>October 25, 2018</td>
<td>“The Oakland Fund For Measure AA”</td>
<td>$75,000 in contributions received</td>
</tr>
</tbody>
</table>
Montauk was forthcoming and cooperative with PEC investigators throughout this investigation. She was open about her role with The Oakland Fund and the events described above, and provided what appears to be complete and truthful answers to PEC investigators’ questions. She also evinced an understanding of the potential public harm involved and indicated a good faith desire to work the PEC in order to address and remedy any errors or other violations that may have occurred. Montauk also voluntarily provided documents to the PEC concerning the events of this case, and her production of documents appeared to be complete.

PEC staff found Montauk to be credible. As part of the settlement of this matter, Montauk has agreed cooperate with the PEC in its resolution of any related enforcement actions that might be brought against other persons involved, by stipulating to the facts of which she has personal knowledge and agreeing to provide truthful testimony should the need arise.

SUMMARY OF LAW & LEGAL ANALYSIS

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.
All definitions of terms are the same as those set forth in the California Political Reform Act (California Government Code Sections 81000 through 91014), as amended, unless the term is specifically defined in Oakland’s Campaign Reform Act (Oakland Municipal Code Chapter 3.12) or the contrary is stated or clearly appears from the context.3

Provisions of the California Political Reform Act relating to local elections, including any subsequent amendments, are incorporated into the Oakland Campaign Reform Act (OCRA), except as otherwise provided in, or inconsistent with, or other provisions of local law.4

The Oakland Fund Was A Candidate-Controlled Committee

All of the alleged violations in this matter hinge on whether The Oakland Fund was “candidate-controlled” during the events in question. Being a candidate-controlled committee is not a violation in-and-of itself; but candidate-controlled committees have additional disclosure requirements, and restrictions on the contributions they can accept.5 Therefore, to determine whether The Oakland Fund violated any of the laws applicable to candidate-controlled committees, it must first be established that it was indeed “candidate-controlled.”

A committee is candidate-controlled if a candidate or elected official has a “significant influence” on the actions or decisions of the committee.6

3 OMC § 3.12.140.
4 OMC § 3.12.240(d).
5 For example, Oakland law specifies that candidate-controlled committee cannot receive contributions from City contractors. Because Montauk largely lacks personal knowledge of any such possible violations and is not being charged with any such possible violations, we will not be discussing them in this Exhibit.
6 OMC § 3.12.040; Cal. Govt. Code § 82016.
Element 1: Committee

The first element to establish is whether The Oakland Fund qualified as a “committee.” A “committee” is any person or combination of persons who directly or indirectly receives campaign contributions totaling two thousand dollars ($2,000) or more in a calendar year, or who makes independent expenditures totaling one thousand dollars ($1,000) or more in a calendar year.

Here, The Oakland Fund received contributions in 2018 well in excess of $2,000, according to its sworn campaign reporting forms. It was also registered as a campaign committee during all of the events in this case, having first registered as such in 2008.

Element 2: Candidate or Elected Official

The second element to establish if a committee is candidate-controlled is whether the person alleged to have controlled the committee was a candidate or elected official. The term “candidate” includes an elected officer. “Elected officer” means any person who holds an elective office.

Here, “Candidate A” was a candidate or elected official because they were already serving as an elected Oakland official at the time of their involvement with The Oakland Fund. They were also a candidate for City office in the 2018 election (the same election in which

7 Cal. Govt. Code § 82013.
8 OMC § 3.12.040(B); Cal. Govt. Code § 82007.
9 OMC § 3.12.040; Cal. Govt. Code § 82020.
Measure AA was to be voted upon. “Candidate A” also had at least one other open campaign committee at the time, for which they were registered as the controlling candidate.

**Element 3: Significant Influence on the Actions or Decisions of the Committee**

Finally, to establish that a committee is candidate-controlled, there must be sufficient facts to show that a candidate or elected official had “significant influence” on the actions or decisions of the committee.\(^\text{10}\) Such influence can be direct or indirect.\(^\text{11}\) Examples of the type of behavior that might constitute significant influence include communicating with a committee about its campaign strategy, messaging, or advertising, or making substantial fundraising efforts for a committee.\(^\text{12}\) Actions that do not constitute significant influence include things such as publicly supporting a campaign, making donations from the official’s own personal funds to a campaign, or appearing on a committee’s advertisements without working on the messaging of those advertisements.\(^\text{13}\) It also does not include providing ministerial or administrative support to a campaign (e.g. bookkeeping).\(^\text{14}\) It does not matter whether the candidate has an official title or role on the campaign: “Practical operational realities, rather than job title, determine whether a committee is controlled.”\(^\text{15}\)

Here, The Oakland Fund would not have been involved at all with the Measure AA campaign were it not for Candidate A's influence. It was Candidate A who contacted the Oakland Fund and convinced them to become the vehicle for the Measure AA campaign.

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\(^{10}\) Cal. Govt. Code § 82016.

\(^{11}\) Id.


\(^{14}\) Lacy Advice Letter, FPPC #I-03-076 (2003).

\(^{15}\) Lacy Advice Letter, FPPC #I-03-076 (2003) at 2 (internal quotation marks omitted).
despite the initial reluctance of the committee’s volunteer board. Candidate A also connected The Oakland Fund with key personnel of the Measure AA campaign, including those that Oakland Fund board members understood to be acting as agents for Candidate A. Only after this intervention by Candidate A and their representatives did The Oakland Fund reorient its existing plans and decide to get involved in the Measure AA campaign. The actual scope and terms of The Oakland Fund’s interactions with the Measure AA campaign were also determined by this intervention by Candidate A and their representatives, such as The Oakland Fund’s hands-off role with day-to-day operations and its anticipated payment of $10,000 at the close of the campaign to make whole the bank balance that The Oakland Fund account carried before mixing in the Measure AA funds. In short, all of The Oakland Fund’s activity and the nature of its operations throughout the 2018 campaign was the result of Candidate A’s influence.

**The Oakland Fund Failed to Publicly Identify Candidate A as Its Controlling Candidate**

All committees must register with the appropriate filing officer and file periodic campaign forms itemizing their contributions and expenditures. For committees that are controlled by an Oakland elected officer, or which are primarily-formed to support or oppose

16 Candidate A may also have influenced the strategy, budget, internal organization, and fundraising of the Measure AA campaign before and after securing The Oakland Fund as a campaign vehicle, all of which would be further evidence of Candidate A’s control over that committee. But because Montauk largely lacks personal knowledge of such matters we are not including them in this Exhibit or asking the Commission to adopt any such findings at this time.


a candidate in an Oakland election, their filing officer is the PEC.\textsuperscript{19} The forms they must file (including any amendments to those forms) include:

- the committee’s initial registration and termination statements (Form 410); and\textsuperscript{20}
- its pre-election and semi-annual campaign statements (form 460).\textsuperscript{21}

Each of those reports, including amendments, must include the committee’s full name.\textsuperscript{22} For a candidate-controlled committee, its name must include the last name of its controlling candidate\textsuperscript{23} (e.g. “... a controlled committee of Councilmember Smith’’). The Form 410 and Form 460 must also be signed by the controlling candidate, under penalty of perjury.\textsuperscript{24}

**Element 1: Candidate-controlled committee**

The first element to establish whether The Oakland Fund failed to file campaign forms identifying Candidate A as its controlling candidate, is to show that Candidate A did indeed control that committee. As demonstrated above, The Oakland Fund was a candidate-controlled committee of Candidate A, an Oakland candidate and elected official.

\textsuperscript{22} Cal. Govt. Code §§ 84102, 84106.5 (full committee name required on Form 410); § 84211(o) (full committee name required on Form 460); § 84203(a) (full committee name required on late contribution report); 84204(b) (full name required on late independent expenditure report).
\textsuperscript{23} Cal. Govt. Code § 84106.5; Cal. Code of Regulations § 18402(c)(1).
\textsuperscript{24} Cal. Govt. Code §§ 84101, 84213(a); Cal. Code of Regulations §18410(a)(13).
Element 2: Failure to Disclose Candidate-Controlled Status on Forms

The next element to establish whether The Oakland Fund failed to file campaign forms identifying Candidate A as its controlling candidate, is to demonstrate the committee filed forms that lacked the required disclosure particular to each form.

Form 410

A Form 410 must include the committee's full name. For a candidate-controlled committee, its name must include the last name of its controlling candidate (e.g. “…a controlled committee of Mayor Smith”). The Form 410 must also expressly disclose that it is a controlled committee, and identify its controlling candidate. The controlling candidate must sign the form under penalty of perjury.

Here, The Oakland Fund For Measure AA filed a Form 410 with the PEC on March 23 and August 22, 2018. Neither of those forms disclosed that it was a controlled committee, identified Candidate A as its controlling candidate, or included Candidate A’s last name in the committee name. Candidate A did not sign any of the forms.

Form 460

A Form 460 must include the committee’s full name. For a candidate-controlled committee, its name must include the last name of its controlling candidate (e.g. “…a controlled committee of Councilmember Smith”). The Form 460 must also expressly disclose that it is a controlled committee, and identify its controlling candidate. The controlling candidate must sign the form under penalty of perjury.
On the following dates, The Oakland Fund filed a Form 460 with the PEC, in which it did not disclose that it was a controlled committee, did not identify Candidate A as its controlling candidate, and failed to include Candidate A’s last name in its committee name:
April 25, 2018 (covering January 1 – March 31, 2018); July 24, 2018 (covering April 1 – June 30, 2018); August 10, 2018 (covering April 1 – June 30, 2018 (amendment)), September 27, 2018 (covering July 1 – September 22, 2018); October 23, 2018 (covering September 23 – October 20, 2018); January 14, 2019 (covering October 21 – December 31, 2018); and June 11, 2019 (covering October 21 – December 31, 2018 (amendment)). Candidate A did not sign any of the forms.

**Liability**

Any person who violates any provision of the Oakland Campaign Reform Act, who causes any other person to violate any provision of this Act, or who aids and abets any other person in the violation of the Act, may be found liable for an administrative violation by the PEC. If two or more persons are responsible for any violation, they shall be jointly and severally liable.25

“Person” means (among other things) an individual, joint venture, corporation (including a nonprofit corporation), association, committee, or any other organization or group of persons acting in concert.26

The principal officer of a committee is any individual primarily responsible for approving the political activity of the committee including, but not limited to authorizing the content of the communications made by the committee, the committee’s contributions or...
In the Matter of Susan Montauk
PEC # 19-01.2 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

expenditures, or the committee’s campaign strategy. If more than one individual shares in the primary responsibility for those activities, each such individual is a principal officer.\(^\text{27}\)

In addition to a committee itself, persons who qualify as principal officers of the committee are jointly and severally liable for violations by the committee. For committees controlled by a candidate, the candidate and the committee’s treasurers are deemed to be principal officers.\(^\text{28}\) In addition, an agent acting on behalf of a person is jointly and severally liable for a violation that arises out of the agent's actions. There is a rebuttable presumption that “agents” of a committee include any current or former officer of the committee; any person who has received compensation or reimbursement from the committee; and any person who holds or has held a position within the committee organization that reasonably appears to be able to authorize expenditures for committee activities.\(^\text{29}\)

“Aiding and abetting” is not itself a violation but rather a legal rule that allows the Enforcement Unit to charge anyone who participated in the underlying violation, even if they were not the direct perpetrator. The test of whether a person aided or abetted in the commission of a violation is whether that person in any way, directly or indirectly, aided the perpetrator(s) by acts or encouraged the perpetrator(s) by words or gestures, instigated or advised the commission of the violation, or was present for the purpose of assisting in its commission.\(^\text{30}\) An aider and abettor must have knowledge of the illegal purpose of the perpetrator(s) and have intentionally assisted them in the violation. The aider and abettor is not only liable for the particular violation that to their knowledge their confederates were

\(^{27}\) 2 Cal. Code of Regulations § 18402.1.

\(^{28}\) OMC 3.12.230(A)

\(^{29}\) OMC 3.12.230(B)

\(^{30}\) People v. Villa, 156 Cal. App. 2d 128, 133, 134 (1957) (applying California Penal Code section 31, which contains a similar “aiding and abetting” provision to that found under OMC 3.12.270(C)).
contemplating committing, but they are also liable for the natural and reasonable or probable consequences of any act that they knowingly aided or encouraged.31

VIOLATIONS:

SUSAN MONTAUK

Respondent, Susan Montauk (a principal officer of The Oakland Fund, who also caused, aided and abetted the violation), violated the following Oakland Municipal Code(s):

Count 1: Failure to Disclose Controlling Candidate Relationship on Campaign Forms

On the following dates, The Oakland Fund filed a Statement of Organization (“Form 410”) with the PEC, in which it did not disclose that it was a controlled committee, did not identify Candidate A as its controlling candidate, and failed to include Candidate A’s last name in its committee name. Candidate A did not sign any of the forms.

<table>
<thead>
<tr>
<th>Date Filed</th>
<th>Committee Name Given on Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 23, 2018</td>
<td>“The Oakland Fund”</td>
</tr>
<tr>
<td>August 22, 2018</td>
<td>“The Oakland Fund For Measure AA”</td>
</tr>
</tbody>
</table>

As the controlling candidate, Candidate A’s last name was required to be included as part of the committee’s name for all purposes. Also, Candidate A was required to be identified as the controlling candidate on the committee’s Form 410, and was required to sign the committee’s Form 410.

31 Id. at 134.
On the following dates, Respondent committee filed a Recipient Committee Campaign Statement ("Form 460") with the PEC, in which it failed to include Candidate A’s last name in its committee name, did not disclose that it was a controlled committee, and did not identify Candidate A as its controlling candidate. Candidate A did not sign any of the forms as its controlling candidate:

<table>
<thead>
<tr>
<th>Date Filed</th>
<th>Dates Covered</th>
<th>Committee Name Given on Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 25, 2018</td>
<td>January 1 – March 31, 2018</td>
<td>&quot;The Oakland Fund&quot;</td>
</tr>
<tr>
<td>July 24, 2018</td>
<td>April 1 – June 30, 2018</td>
<td>&quot;The Oakland Fund&quot;</td>
</tr>
<tr>
<td>August 10, 2018</td>
<td>April 1 – June 30, 2018 (amendment)</td>
<td>&quot;The Oakland Fund&quot;</td>
</tr>
<tr>
<td>September 27, 2018</td>
<td>July 1 – September 22, 2018</td>
<td>&quot;The Oakland Fund for Measure AA&quot;</td>
</tr>
<tr>
<td>October 23, 2018</td>
<td>September 23 – October 20, 2018</td>
<td>&quot;The Oakland Fund for Measure AA&quot;</td>
</tr>
<tr>
<td>January 14, 2019</td>
<td>October 21 – December 31, 2018</td>
<td>&quot;The Oakland Fund for Measure AA&quot;</td>
</tr>
<tr>
<td>June 11, 2019</td>
<td>October 21 – December 31, 2018 (amendment)</td>
<td>&quot;The Oakland Fund&quot;</td>
</tr>
</tbody>
</table>

As the controlling candidate, Candidate A’s last name was required to be included as part of the committee’s name for all purposes. Also, Candidate was required to be identified as the controlling candidate on the committee’s Form 460, and was required to sign the committee’s Form 460.

On the following dates, Respondent committee filed a Contribution Report ("Form 497") with the PEC, in which it failed to include Candidate A’s last name in its committee name:
As the controlling candidate, Candidate A’s last name was required to be included as part of the committee’s name for all purposes.

In this way, Respondent violated OMC § 3.12.240, incorporating Cal. Govt. Code §§ 84102(f), 84106.5, 84203, 84211(o)-(p), 84213(a), and Regulation 18402(c)(1) and 18410(a)(13).
EXHIBIT # 1

In the Matter of Susan Montauk
PEC # 19-01.2 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

PENALTIES

Oakland’s Campaign Reform Act authorizes the Commission to impose the following base-level and maximum penalties for the following types of violations:

<table>
<thead>
<tr>
<th>Violation</th>
<th>Counts</th>
<th>Base-Level Per Violation</th>
<th>Statutory Limit Per Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to File and/or Disclose Controlling Candidate Relationship on Campaign Forms</td>
<td>1</td>
<td>$1,000</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

In addition to monetary penalties, the Commission may issue warnings or require other remedial measures.32

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);

32 OMC § 3.12.270(C).
7. The degree to which the respondent cooperated with the PEC’s enforcement activity in a timely manner;

8. The relative experience of the respondent.

The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor – or any specific number of factors - be present in an enforcement action when determining a penalty. As such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC’s power to bring an enforcement action or impose a penalty.

Here, the violations resulting from various parties’ actions in this case are among the most serious in the Campaign Reform Act (OCRA). The strict rules applying to candidate-controlled committees are not mere technicalities but go directly to the very purpose of campaign finance law. Nearly every major Supreme Court case underpinning our campaign finance system emphasizes that disclosure of the people controlling and donating to a campaign is the core feature of these laws, and is one of the principal goals of OCRA.33 This is because campaign committees – particularly those controlled by elected officials such as Candidate A – can raise a significant amount of money from sources whose business or other interests could benefit from being in a candidate or official’s good favor, even if that relationship never rises to a formal quid pro quo. To reduce the possibility that those officials’ subsequent decision-making could be unduly influenced by those campaign contributions, another principal goal of OCRA is to limit or ban certain types of contributions to candidates, such as contributions from City contractors or those in excess of the contribution limit. But if a campaign does not disclose that it is controlled by a candidate, there is no way to know that these restrictions might even apply to that campaign.
public disclosure is required in order to reduce the actuality or appearance of corruption, and
to keep the public informed as to the relationship between campaign donors and elected
officials. And beyond these corruption-related concerns, disclosure of who is controlling and
funding a campaign is also upheld by courts as crucial to helping voters make informed choices
as to whether to support or oppose that campaign on election day.

In this case, Candidate A used their influence to effectively commandeer and
repurpose another committee to which Candidate A was not publicly attached. This gave a
false impression of independence between Candidate A and donors to the Oakland Fund. It
also prevented voters and regulators from checking whether any of the contributions
received by The Oakland Fund were in compliance with other laws specific to candidate-
controlled committees, such as the prohibition on receiving contributions from City
contractors.

Regarding Montauk in particular, however, there are significant mitigating factors that
support a lower penalty. Montauk was one of three members of a volunteer board and had
limited involvement or even knowledge of the violations that took place, other than voting to
support Candidate A’s plans in the first place. She was not personally involved in preparing
The Oakland Fund’s campaign forms and had limited knowledge of campaign finance law, nor
was she ever advised by more experienced and knowledgeable actors (such as Candidate A)
that there might be potential legal issues to consider. Simply put, Montauk was not really a
“bad actor” in the events described above.

Most importantly, Montauk has been forthcoming with PEC investigators, is willing to
cooperate in the resolution of any other related enforcement matters that might arise in
connection with these events, and wishes to work with the PEC to remedy any mistakes or
other violations that may have occurred. There is also a possibility that other people could
ultimately be charged with the same or related violations in connection with this matter, so
the penalty being imposed here is not necessarily meant to be a global resolution but rather
to impose a fair and proportionate penalty upon Montauk individually. While the PEC cannot
simply “look the other way” given our enforcement responsibilities, the nature of Montauk’s personal involvement, and the seriousness of the violation involved, we also believe the mitigating factors described here are significant.

In light of these factors, PEC staff makes the following penalty recommendations:

**Failure to File and/or Disclose Controlling Candidate Relationship on Campaign Forms (Count 1)**

Here, PEC staff and Respondent recommend a penalty of $500:

<table>
<thead>
<tr>
<th>Count</th>
<th>Respondents</th>
<th>Baseline Penalty</th>
<th>Recommended Penalty</th>
<th>Maximum Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Susan Montauk</td>
<td>$1,000</td>
<td>$500</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

**RECOMMENDATION**

Based on the foregoing, PEC staff and Respondent recommend that the Commission approve their stipulated agreement and impose the following financial penalties:

As to respondent SUSAN MONTAUK (Count 1), a penalty in the amount of **$500**.